D.B. CIVIL SPECIAL APPEAL NO.559/2003.
(Suraj Mal vs. State of Rajasthan & Ors.)

Date : 12.04.2005.

HON'BLE MR.JUSTICE N.N.MATHUR
HON'BLE MR.JUSTICE MANAK MOHTA

Mr.R.S. Saljua, for the appellant.
Mr.O.P. Boob, Addl. Govt. Advocate.

We have heard learned counsel for the appellant and perused the order of the learned Single Judge dated 02.05.2000, dismissing the writ petition on the ground of latches.

An inquiry was conducted against the appellant for willful absence. He remained absent during the period 26th March, 1992 to 24th January, 1994 i.e. for more than one year and ten months. On his request the Medical Board was constituted to verify if he had suffered from epilepsy. He did not appear before the Medical Board on 21st March, 1994. He pleaded for reconstitution of the Medical Board as he could not appear before the Medical Board on account of some family problem. The Medical Board was reconstituted on 22nd February, 1995. He did not appear before the Board on the said date as well. On appreciation of evidence, the inquiry officer concluded that the appellant remained willful absent without justified reason. During the period of absence, he did not inform the

authorities. Thus, he was removed from services by the order of the Superintendent of Police, Ajmer dated 09.01.1997. He preferred an appeal against the said order which was dismissed by the Deputy Inspector General of Police, Ajmer by order dated 21.10.1997. The said order was challenged by presenting a writ petition on 11.04.2000. Thus, there was a delay of more than three years. No explanation of whatsoever nature has been pleaded for the delay in filing the writ petition. Thus, the learned Single Judge dismissed the writ petition on the ground of latches.

The appellant has sought to explain the delay by stating that there is a limitation of three years for filing the review application and the said period yet not expired. We are enable to appreciate the contention raised. Thus, there is absolutely no explanation for delay in filing the writ petition.

The learned counsel relying on a decision of the Apex Court in Ramchandra Shankar Deodhar vs. The State of Maharastra reported in 1974 SCC L & S 137 submits that the delay is not fatal in case third party rights are not involved. We have read the decision of the Apex Court. In the said case the delay was explained and the same was found to be satisfactory. There is no absolute rule that in a case where third party rights are not affected the latches in the writ jurisdiction becomes

insignificant. It is further contended that in the facts of the case the penalty of termination is harsh and the same may be converted into voluntary retirement.

At the first instance the learned Single Judge has rightly refused to entertain the writ petition on the ground of latches and consequently even on merit the conduct of the appellant dis-entitles him to any sort of leniency. A casual and careless person like appellant cannot be tolerated in service. By no standard, the punishment awarded can said be disproportionate to the proved misconduct.

No interference is warranted with the order of the learned Single Judge.

The special appeal stands dismissed.

(MANAK MOHTA),J. **(N.N.MATHUR),J**

ashwini/-